"a judgment will not be reversed because of contradictory instructions where it is clear to the court that the erroneous instructions did not mislead the jury." 11 ENC. PL. & PR. 149; *Imhoff* v. *C. M. Ry. Co.* 20 Wis. 362; *U. P. Ry. Co.* v. *Milliken,* 8 Kan. 647; *Garey* v. *Sangston,* 64 Md. 31; *Washington So. Ry. Co.* v. *Lacey,* 94 Va. 460; *Robbins* v. *Roth,* 95 Ill. 464; *Maier* v. *Mass. Benefit Assoc.,* 107 Mich. 687, 65 N. W. 552. In the cases representing the general rule it seems that the courts do not attempt to inquire into the effect of the contradictory instructions on the minds of he jurors. As the court said in *Boulder* v. *Niles,* 9 Colo. 415, 12 Pac. 632, "We cannot determine by which instruction the jury was governed." To the same effect, *McDivitt* v. *Des Moines City Ry. Co.* 141 Iowa, 689; 2 THOMPSON, TRIALS (2 Ed.) § 2326.

WILLS—CREATING POWER—APPOINTMENT BEFORE DEATH OF TESTATOR.—The testator's will provided for a legacy, and stipulated that in case the legatee predeceased the testator, "then I give the same to such person or persons as she may have appointed by will to receive the same, and in default of appointment, to her next of kin." A statute provided that a power might be vested in any one capable in law of holding property. The legatee died before the testator, having made a will exercising the power. *Held* that being dead at the time of vesting i. e. at the death of the testator, the legatee was not capable of taking, and hence the power never vested. *In re Mayo's Will,* (N. Y. 1912) 136 N. Y. S. 1066.

An appointment under a contingent power before it vests is good if the contingency afterwards happens: where the contingency is an event; *Countess of Sutherland* v. *Northmore,* 1 Dicken 56; *Dalby* v. *Pullen,* 2 Bing. 144; *Johnson* v. *Touchet,* 37 L. J. Ch. N. S. 25; *Logan* v. *Bell,* 1 C. B. 872; *Wandesforde* v. *Carrick,* Ir. R. 5 Eq. 486; *Machir* v. *Funk,* 90 Va. 284, 18 S. E. 197; *Hamlin* v. *Thomas,* 24 Wkly. Notes Cas. (Pa.) 4; or where the person in whom the power is to vest is uncertain; *Thomas* v. *Jones,* 2 J. & H 475; but see *McAdam* v. *Logan,* 3 Brown Ch. 310, and *Garrett* v. *Duclos,* 128 App. Div. 508, 112 N. Y. S. 811. The contingent power must be referred to in the will purporting to execute it, in order to be well executed, *Lepley* v. *Smith,* 130. C. C. & R. 189; but general words of gift will operate as such appointment unless a contrary intention can be gained from the will itself, *Bayes* v. *Cook,* 14 Ch. D. 53. A further requisite is that the power must vest before the death of the person exercising the power. *Stillman* v. *Weedon,* 16 Sim. 26; *Curley* v. *Lynch,* 206 Mass. 289. The testator in the principal case attempted to create a power which would have been void even in the absence of statute.